



Hire El Paso First – Local Bid Preference Policy

**Legislative Review Committee
September 17, 2013**

Presented by
Purchasing & Strategic Sourcing
Department



Background Information

During the 82nd Texas Legislative Secession the Texas Local Government Code was amended authorizing large municipalities to award contracts to the “best combination of price and economic development opportunities”.

The result was the introduction of local bid preferences into the bidding processes of large municipalities within the State of Texas.



Key Impact to Bidding Process

- Municipalities may choose to award a bid to a local company that is not the lowest bidder provided that the following conditions are met:
 - Bid by local company is within designated threshold (i.e., 3 % or 5%) of the lowest bid of non-local bidder. Thresholds are established within the State Code for public works and real property and services; and
 - Said local company provided an economic development opportunity that is acceptable to the municipality.



Economic Development Opportunity

Economic development opportunities means economic benefits to/for the City of El Paso and its citizens created by the award of a procurement contract, including, but not limited to, the following:

- Establishment and support of businesses (subcontracting opportunities) within the City of El Paso, Texas;
- Employment of local residents in the delivery of the contracted service and/or product;
- Employment of local residents in the manufacturing/production processes of the products being procured or the delivery of services being rendered; and
- Increase of tax revenues to the City of El Paso.



Local Bid Preference Applicability

When City of El Paso facilitates the bidding process RF(X):

- *Request for Quote;*
- *Low Bid;*
- *Informal Bid;*
- *Formal Bid;*
- *Electronic Bids; and*

**NOT APPLICABLE TO SOURCING FROM COOPERATIVE
CONTRACTS, CONSTRUCTION CONTRACTS OVER \$100,000
OR PURCHASE OF TELECOMMUNICATION SERVICES AND
INFORMATION SERVICES**



Key provisions of existing Policy

Section 2	Current Policy	Desired Goal
Definition of Local Business	<ul style="list-style-type: none">• Business incorporated or principal place of business is located within city limits of El Paso; and• Has a office or manufacturing presence that employs minimum of 3 full time employees	<ul style="list-style-type: none">• Defined area of applicability;• Define threshold operational aspect of company to be deemed local;• Encourage businesses to locate/establish a presence in El Paso; and• Recognize business entities with significant presence as local.



Key provisions of existing Policy

Section 3	Current Policy	Desired Goal
Construction Contracts	<ul style="list-style-type: none">• Bid preference is only applicable to construction bids less than \$100,000	<ul style="list-style-type: none">• Define applicable threshold• Compliance with State Code
Real property or personal property or services	<ul style="list-style-type: none">• Bid preference is applicable to real property or personal property or services less than \$500,000 (within 5%)	<ul style="list-style-type: none">• Define applicable threshold• Compliance with State Code
Real property or personal property	<ul style="list-style-type: none">• Bid preference is applicable to real property or personal property greater than \$500,000 (within 3%)	<ul style="list-style-type: none">• Define applicable threshold• Compliance with State Code



Stakeholder's proposed revisions

Section 2	Proposed Revisions	Desired Goal
Definition of Local Business	<ul style="list-style-type: none">• Require 20 percent of entities workforce on awarded contract to be residents of the City of El Paso, Texas;• Increase minimum number of full time employees from 3 to 15; and• Require non-local business to pay taxes on property being used as the El Paso Office	<ul style="list-style-type: none">• Ensure employment opportunities are required consideration in an award; and• Increased investment from non-local companies opening satellite offices



Stakeholder's proposed revisions

Section 3	Proposed Revisions	Desired Goal
Construction Contracts	<ul style="list-style-type: none">• Apply bid preference on construction contracts greater than \$100,000	<ul style="list-style-type: none">• Increase utilization of bid preference on larger capital expenditures; and• Have bid preference applied to Quality of Life Bond projects



Stakeholder's proposed revisions

Section 5	Proposed Revisions	Desired Goal
Reciprocal Preference	<ul style="list-style-type: none">Expand existing state reciprocal bidding Code to include County and Municipal governments	<ul style="list-style-type: none">Ensure bidding preferences applied to El Paso firms are reciprocated when non-local firm are bidding of City of El Paso projects



Legal Analysis of Sections 271.905 and 271.09051 of the Local Government Code

Reviewed the legality of the proposed revisions to the “Hire El Paso First” Policy by analyzing the following:

1. Plain language of the Local Government Code
2. Legislative History
3. Policies adopted by other Texas Cities



“Principal Place of Business”

- Not defined by the Sections 271.905 and 271.9051 of the Local Government Code or other sections of other state statutes.
- The proposed definition is legally supportable. It is a policy decision as to how to define term.
- Each City that has adopted a local bid preference policy adopted a different definition of “Principal Place of Business”.
- Supreme Court Case *Hertz Corp v. Friend*, 559 U.S. 77
“the place where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.”



Reciprocal Preference

- Section 2252.002 of the Texas Government Code authorizes a reciprocal preference.
- Allows the City of El Paso to apply a preference of a resident bidder by the same percentage that a nonresident bidder would receive in their home state.
- Definition of a “resident bidder “- a person whose principal place of business in the state.” Section 2252.001(4) of the Texas Government Code.
- Recommendation: adopt the reciprocal preference language in the Hire El Paso policy but only as it applies to out of state bidders.



Construction Contracts of over \$100,000

CODE SECTION	PURCHASES OF REAL/ PERSONAL PROPERTY AND SERVICES	CONSTRUCTION
§271.905	<ul style="list-style-type: none">• Addresses• No monetary cap• Applying a 3% preference	No mention
§271.9051	<ul style="list-style-type: none">• Addresses• Purchases less than \$500K• Applying a 5% preference	<ul style="list-style-type: none">• Addresses• Purchases less than \$100K• Applying a 5% preference



Legislative History

- “the intent of the bill was to allow local governments to make small purchases from local business at a minimal expense to the tax payer. Unfortunately, the law did not set a maximum amount for such contract. This has led municipalities to award large contracts to local bidders, which, while in keeping with the statute has led to exponentially more expense to the taxpayer than intended.”
- Researched the policies and ordinances of other cities and no other municipalities are applying the local bid preference to construction contracts in the amount over \$100,000.



Alternatives to the Local Government Code

1. Local Government Corporation – Chapter 431, Subchapter D Transportation Code

Competitive bidding requirements do not apply for an improvement that is:

- a. Constructed in a reinvestment zone; and
- b. The construction is managed by a private venture participant.

2. Alternative Procurement Methods - Chapter 2267 Government Code

- Competitive bidding requirements for purchases do not apply if the City determines that an alternative procurement method provides a better value for the municipality.
- Methods: Design Build, Construction Manager at Risk, Competitive Sealed Proposal



Recommendation for Construction Contract Over \$100,000

- Adopt one of the alternatives proposed and tailor a procurement method for construction contract in the amount of over \$100,000 without the restraints of the Local Government Code.
- Can give the 3% preference to a bidder whose principal place of business is in the City with a monetary cap.



QUESTIONS?